COURT'S ORDER WHETHER THE CASE IS OR IS NOT APPROVED FOR REPORTING
[Chapter VIII, Rule 32(2) (b)]
Description of Case

S.T.R. No. 7 of 2001 **decided on: 2th August, 2005**

S.T.R. No. 7 of 2001
(Old No. 510 of 1992)

Commissioner of Sales Tax
U.P. Lucknow. **…..Applicant/Revisionist**

Vs.

Omkar Rice Mills
Sitarganj, Khatima, Nainital **……Opposite Party**

Shri Pitamber Maulekhi, Learned Additional Advocate General for the Revisionist.
Shri S.K. Posti, Learend Counsel for the respondent.

A.F.R. (Approved for Reporting)
Not approved for Reporting

Date: 02.08.2005

(Hon. Mr. Justice Prafulla C. Pant)

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

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Shri Syed Nadim, learend Counsel for the respondent.

Hon'ble Prafulla C. Pant, J.

This Sales Tax Revision was filed before the Allahabad High Court in the year 1992, from where it has been received by transfer by this Court, under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

The revision, preferred under Section 11(1) of U.P. Sales Tax Act, 1948, is directed against order dated 25.11.1991, passed by Sales Tax Tribunal, Haldwani in S.A. No. 111 of 1991, and 146 of 1991, whereby the appeal of the assessee was allowed and the appeal of the revenue was dismissed.

The question of law involved in this revision is as under:-

Whether in the facts and circumstances of the case, the Sales Tax Tribunal was justified in holding that the dealer had no mensrea in issuing from 3C(2) to the purchaser, even though he had not actually paid any tax?

Heard Shri Pitamber Maulekhi, learned counsel for the revenue and Shri Syed Nadim learned counsel for the assesse.

The assessee is a dealer who runs a rice mill. He produces rice and rice polish. He obtained eligibility certificate under Section 4A of U.P. Sales Tax Act, 1948. The dispute pertains to the penalty imposed for the assessment year 1985-86 and 86-87.

Learned counsel for the revenue, argued that assessee, a new manufacturing unit, registered under Sales Tax Act, 1948, obtained eligibility certificate under Section 4A of the aforesaid Act. As such, it was exempted from the tax for the impugned assessment years. There is no dispute that he did not pay any tax for the assessment year, yet it issued form 3C (2) to the purchaser of his rice, which means that he gave a declaration of the purchaser that he had actually paid the tax. In this connection, it is further argued that the revisionist was rightly imposed penalty amounting to Rs. 66,678/- , under Section 15A (1)(1) of the aforesaid Act, after hearing the dealer. He supported his contention on the basis of the principle of law laid down in Mahavir Rice Mills Vs. Commissioner Sales Tax UPTC 1159 Aand Bajrang Industries Vs. Commissioner Trade Tax, 2001 NTN (Vol. 18) – Pg. 172. In view of said principle of law, as contained in the aforesaid case laws, this Court is in agreement with the submission of the learned counsel for the revisionist that once the assessee obtained the eligibility certificate under Section 4A of the Act, by issuing from 3C(2) to his its purchaser, the assessee made the purchaser to evade the tax. As such, Section 15A(1) (1), gets attracted in this case.

However, learned counsel for the respondent argued that there was no mensrea on the part of the assessee, as such, the learned tribunal has rightly set aside the penalty imposed against him. Had there been a case where the eligibility

certificate under Section 4A, was issued at late stage and meanwhile the assessee had used the form 3C (2), obtained from the department, it could have been said that there was no mensrea on his part. However, in the present case, the respondent was in possession of eligibility certificate under Section 4A and still used form 3C (2), issued by the department, as such, it will be presumed that he had knowledge that though he had not paid the tax, he issued false declaration to the purchaser that tax had been paid. Sri Syed Nadim, learned counsel for the assessee, contended that Section 15A (1) (1) gets attracted when some false certificate or declaration is issued. In this connection, he further submitted that the form 3C (2) was genuine, as obtained from the Sales Tax Officer. I am unable to agree with the submission of the learned counsel for the reason that though the department should not have issued form 3 C(2) to the assessee, but even if it was issued since assessee had the knowledge that he had not paid the tax as such using form 3C (2) was an offence which attracted penalty under Section 15 A (1) (1),

Therefore, this Court is of the view that learned Sales Tax Tribunal has erred in law by setting aside the penalty. As such, the revision deserves to be allowed. And the same is allowed. Question of law as mentioned above is answered in favour of the revenue. Impugned order dated 25.11.1991 is set aside to the extent imposition of penalty was reversed by the tribunal.

(Prafulla C. Pant, J.)

Dt: 02.08.2005

Sweta